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Supreme Court, U.S.
FILED

95 149 JUL 24 1995

No. 95 —

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

RICHARD L. PIPKINS, ESQ.

Petitioner

v.

STATE BAR OF NEVADA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD L. PIPKINS, ESQ*
626 South Seventh Street
Las Vegas, Nevada 89101
(702) 384-1723

*Petitioner Appearing in
Proper Person

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QUESTION PRESENTED FOR REVIEW

Is it a violation of an accused's constitutionally guaranteed right to a fair and impartial hearing, and right to due process of law, for an accused to be judged by an individual who has personal animosity towards the accused and who has previously threatened to destroy the career of the accused?

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OPINIONS AND JUDGMENTS IN THE COURTS BELOW

The opinion of the Nevada Supreme Court, addressing and rejecting Petitioner's federal constitutional challenges, is reported as RICHARD L. PIPKINS v. STATE BAR OF NEVADA, 111 Nev. — (1995).

JURISDICTION OF THIS COURT

The judgment of the Nevada Supreme Court was entered and filed on April 28, 1995. This Court has jurisdiction to issue the writ of certiorari under 28 U.S.C. 1257 (1988), because Petitioner raised and preserved, and the highest court of the state specifically rejected, a constitutional claim.

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CONSTITUTIONAL AND RULE PROVISIONS AT ISSUE

AMENDMENT V.

No person shall be ... deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

AMENDMENT VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.

AMENDMENT XIV.

Section 1. ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

Nevada Supreme Court Rule 103(8) states:

Hearing panel members shall not participate in any proceeding in which a judge similarly situated would be required to abstain. Any member whose term expires while his panel is considering a complaint shall remain a member until its disposition.

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Nevada Supreme Court Rule 105(2)(a) states:

CHALLENGES TO AND AD HOC APPOINTMENTS OF PANEL MEMBERS. The complaint shall be served with the list of members of the disciplinary board from which the chairman will designate five to sit as the respondent's hearing panel. The respondent, or each if more than one, and bar counsel may exercise two peremptory challenges each to the people on the list by delivering such in writing to the chairman on or before the date a response to the complaint is due. The chairman may make ad hoc appointments to replace either the layman or attorneys on the disciplinary board in the event challenges or disqualification reduce the member to less than the five required for a hearing panel. Ah hoc appointees shall be subject to disqualification under subsection 8 of rule 103 and any remaining peremptory challenges unexercised by either respondent(s) or bar counsel. The hearing panel as finally constituted shall include a non-lawyer.

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STATEMENT OF FACTS

In 1983 Petitioner was an attorney at a very powerful, politically prominent, law firm in Las Vegas, Nevada, then known as Jones, Jones, Bell, Close & Brown. Petitioner was an associate assigned to the litigation department of that firm which at that time was handling several very large multi-district litigation matters including litigation stemming from the massive MGM and Las Vegas Hilton fires, as well as multi-million dollar litigation involving the construction of an EPA mandated advanced waste water treatment plant in Las Vegas.

Petitioner, who as a litigation associate was then working more than seventy hours per week for the firm, was offered cocaine by a supervising partner in that firm who indicated that he should use the drug and that such use would increase Petitioner's performance. Petitioner refused this offer and has never used cocaine. Petitioner confided in another partner at the firm exactly what had happened and sought his guidance. The individual that Petitioner confided in was Gary R. Goodheart. Mr. Goodheart apparently reported the substance of the conversation to other partners in the firm. Petitioner was then told by Mr. Goodheart that the partner who had offered Petitioner the controlled substance was responsible for several million dollars per year in income to the firm and because of that fact it was in the best interests of the firm to retain the partner and terminate the Petitioner. Mr. Goodheart also told Petitioner that if Petitioner ever told anyone about the drug use of his partner that he would deny it and that in retaliation he would see that Petitioner's career would be destroyed. Mr. Goodheart further threatened Petitioner that the situation had already caused a great deal of displeasure in the firm with Petitioner and that "if our paths ever even cross again, I will make you wish that you never met me." Petitioner took Mr. Goodheart's threats extremely seriously and did not reveal the exact substance of these conversations for several years.

Petitioner left the law firm in January of 1984 and went to work for the Clark County District Attorney's Office. Petitioner then later went into private practice and remained in private practice, except for a brief stint at the Harvard Business School, until May 1993. Petitioner, who comes from a law enforcement

family and was once himself a commissioned peace officer with the Las Vegas Metropolitan Police Department, has a background which includes being appointed the youngest Judge in the state of Nevada and also being the only person in the modern history of Nevada to have clerked for the District Court prior to having attended law school. In approximately ten years of practice before all of the Courts of the state of Nevada on an almost daily basis Petitioner has never been fined, censured, or disciplined in any way whatsoever except for the one matter now before the Court. Further, throughout his career, Petitioner, who graduated from the University of Nevada, Las Vegas in three years with honors, who graduated from the University of Southern California Law Center, who has never lost a criminal trial, and who has lost only one civil trial, has never been responsible for one single case being overturned on appeal. In other words, at one time it appeared that Petitioner had an outstanding future in the legal profession and in Nevada.

In 1989 the State Bar of Nevada brought charges against the Petitioner centered around the allegation that in 1988 the Petitioner had failed to inform a state trial court judge in a civil motion hearing that the defendants might be represented by counsel. It has since been shown by a sworn Affidavit from the trial Judge, a copy of which may be found at Appendix page 2a, that the hearing in which these allegations were alleged to have been made was taken off that court's calendar before the appearance of the Petitioner, and also a part of the record in this matter is a letter that the attorney who later represented the defendants wrote in this same time frame saying that he had no intention to represent the defendants in the matter. A copy of this letter is attached hereto at Appendix page 9a. The State Bar also alleged that the Petitioner had then made misrepresentations to a bank that resulted in the bank releasing money to Petitioner's clients. The record in this case includes a letter (a copy of which is attached at Appendix page 10a) from the Petitioner to the bank's most senior counsel, the accuracy of which has never been challenged, clearly explaining all of the details of the situation, as well as an indemnity agreement (a copy of which is attached at Appendix page 12a) between the bank and Petitioner's clients, to which Petitioner was not a party, but merely signed the document as a Notary, which contains the only legal representations made to the bank prior to the bank's releasing

back to Petitioner's clients that money which they had themselves earned and had deposited in that very same bank. In short, the Petitioner has shown to all involved that he absolutely did nothing wrong in this matter.

In August of 1989, a Hearing was held in respect to the charges against the Petitioner without the Petitioner being noticed of the Hearing or given any opportunity to appear and defend himself. Since there was no opposition, that Hearing Panel recommended the disbarment of the Petitioner. Under Nevada law the matter then automatically went to the Nevada Supreme Court which ruled in 1990 in favor of the Petitioner stating that the Petitioner should be given an opportunity to appear and defend himself.

In 1991 the State Bar of Nevada refiled these charges against the Petitioner and in the summer of 1992 a Hearing Panel was selected and a hearing date was set to consider these charges. In the last days before the hearing was to be held, a well respected member of the panel was suddenly removed and Mr. Goodheart, the same individual who had previously been responsible for the termination of the Petitioner and who had threatened to destroy the career of the Petitioner, was suddenly added. Petitioner and his counsel repeatedly objected to this, both orally and in writing, and when this failed, the Petitioner filed an Emergency Petition with the Nevada Supreme Court alleging that because of a biased Panel the Petitioner was about to be denied a fair Hearing. The Nevada Supreme Court, in response to Petitioner's emergency petition, declined to intervene at that time.

At the time set for the Hearing, Petitioner appeared with his counsel and once again challenged the composition of the panel. Technically, the Nevada Supreme Court Rules ("SCR's") govern such Hearings, specifically SCR 103 & SCR 105, and provide that an accused has the right to two (2) preemptory challenges of the Hearing Panel Members, as well as a right to challenge specific members of the Panel for cause. Petitioner, who had already been allowed to exercise one of the two preemptory challenges allowed under SCR 105, attempted to use his second preemptory challenge, as well as challenge Mr. Goodheart for cause, and both of these efforts were refused by the Panel. When the Hearing in

this matter was convened, the Hearing Panel, including Mr. Goodheart, accepted the Nevada Supreme Court's decision to not intervene prior to the Hearing as carte blanche to officially seat Mr. Goodheart, that what they were doing was correct, and thereby refused to allow Petitioner either of these enumerated rights.

The Hearing Panel, including Mr. Goodheart, continued on and heard the prosecutor's presentation against the Petitioner. Mr. Goodheart was particularly vocal, both during the hearing and most especially during breaks, in attacking Petitioner and condemning him even before all evidence was heard. Mr. Goodheart was also centrally involved in the refusal of the Panel to hear a legally recorded tape recording, made by Petitioner and his counsel, of a conversation between Petitioner's counsel and the attorney who later represented the defendants in the civil case at issue who repeatedly made statements clearing the Petitioner. Thanks to the efforts of Mr. Goodheart the panel refused to hear the tape, accept it into evidence, or even allow it to be played as an offer of proof for the consideration of the panel and/or the Nevada Supreme Court.

Mr. Goodheart was as good as his threats and, thanks to his efforts, the Hearing Panel, in spite of overwhelming evidence that Petitioner did absolutely nothing wrong, made a recommendation to the Nevada Supreme Court that the Petitioner be suspended from the practice of law for a period of five years. In briefing the matter before the Nevada Supreme Court, the Petitioner alleged an improper selection process for the Hearing Panel (e.g., in secret, not by random selection, and from a predisposed pool which included biased individuals) and the violation of Petitioner's constitutional rights due to the improper inclusion of Mr. Goodheart who was clearly biased against the accused. In spite of this, on May 28, 1993, the Nevada Supreme Court affirmed the decision of the panel and suspended the Petitioner from the practice of law in Nevada for a period of five years.

A Petition For A Writ of Certiorari was then filed with this Court based upon the May 28, 1993, Nevada Supreme Court Order and alleging several violations of the due process rights of the Petitioner. This was denied by the Court, as was a Petition seeking reconsideration. Petitioner then, in the summer of 1993,

made a new Motion before the Nevada Supreme Court seeking reconsideration of the case and specifically asserting that the accused's constitutionally guaranteed due process rights had been violated by the inclusion of Mr. Goodheart who was a person with an identifiable bias against the Petitioner. On April 28, 1995, the Nevada Supreme Court announced a new decision which granted a Re-Hearing of the case and provided that the Court had reconsidered the entire matter, including the substance of the allegations as well as the punishment, and was entering a new Order. A copy of this "Order Granting Rehearing" is attached hereto at Appendix page 1a for the Court's review. This new decision provides that "Having reviewed the record and the pleadings" the Petitioner should be suspended from the practice of law in the state of Nevada for a period of three years from the date of the original Order of May 28, 1993, thus in effect reducing the punishment by two years and making Petitioner eligible for readmission in some ten months from now.

However, what Petitioner has sought all along is not sympathy or mercy, but rather justice. Petitioner is an innocent person, wrongfully accused and unfairly convicted of alleged ethical improprieties that clearly did not occur. Had it not been for the improper participation of Mr. Goodheart in the Hearing Panel, all of the evidence of Petitioner's innocence, including the previously referenced tape recording as well as other evidence, would have been allowed to have been placed in the record and the remaining members of the Hearing Panel, as well as the Nevada Supreme Court, would have been able to consider a complete record and thereby have been able to consider all of the evidence of Petitioner's innocence. Directly as a result of the participation of Mr. Goodheart, justice was not served, the Petitioner was not found innocent, and the Petitioner was deprived of the property interest and the privilege of practicing law in Nevada. Petitioner had a right to a fair unbiased Hearing Panel that did not include individuals who had threatened to ruin his career or who had threatened to insure that "if our paths ever even cross again, I will make you wish that you never met me."

By the Nevada Supreme Court's decision of April 28, 1995, affirming the decision of Mr. Goodheart's Hearing Panel, that Court took away more than the Petitioner's right to practice law. Interwoven with Petitioner's right to practice law was his good

name and his right to not be libeled by the Nevada Supreme Court without at least first giving him one hearing before an unbiased judicial body. Although this case has a somewhat long and tortured history, it must be emphasized that since these charges were refiled against him, the Petitioner has only had one Hearing and that was before the tainted Goodheart Hearing Panel which refused to hear all of the evidence of innocence and which was swayed by an individual who sat in judgment over the Petitioner even though he had previously been responsible for the termination of the Petitioner from his employment and who had threatened to ruin the career of the Petitioner.

Petitioner is not asking that this Court reconsider its previous denial of a Petition for a Writ of Certiorari, but rather asks that the Court properly consider this matter as a new case which springs from the full review and consideration given by the Nevada Supreme Court in respect to its April 28, 1995, decision. That decision reviewed the entire case and reached a new decision separate and apart from that which it reached in May of 1993. This Petition is clearly a new matter brought before the Court which springs from a new lower court decision, which in turn sprang from a new briefing of the matter and the consideration of new evidence. Such new evidence included a sworn Affidavit from the trial court Judge, which may be found at Appendix page 3a, who, incidently, has never had anything but positive things to say about Petitioner, has never had any objection whatsoever as to the conduct of the Petitioner, and has verified each of the facts exactly as Petitioner has testified to them. New evidence also included an Affidavit from a process server, attached hereto at Appendix page 6a, which further verified, and is totally consistent with, the testimony of the Petitioner. Again, it should be emphasized that such new evidence had to be submitted in the form of Affidavits because the Nevada Supreme Court, which has exclusive jurisdiction over such matters in Nevada, has never allowed any Hearing or oral argument on this case since the charges at issue were refiled against the Petitioner.

It is unconscionable that the Nevada Supreme Court would take away a person's profession and besmirch his good name without at least allowing one fair hearing before some court. This is a situation that is absolutely astounding. It is equally astound-

ing that a person can be held to have lied to a trial court Judge in a hearing when all parties agree that the hearing never took place and the Judge says under oath that no such lie ever occurred. Petitioner asks that this court intercede and allow the Petitioner to appear before a fair court and provide proof that the rights of the Petitioner were flagrantly violated when Mr. Goodheart, an individual who had threatened Petitioner and his livelihood, was allowed, over Petitioner's repeated objections, to sit in judgment over Petitioner.

ARGUMENT

I. NO COURT ANYWHERE IN THIS COUNTRY, EXCEPT THE NEVADA SUPREME COURT, WOULD HAVE APPROVED OF A PERSON BEING JUDGED BY AN INDIVIDUAL WHO HAD AN IDENTIFIED PERSONAL ANIMOSITY TOWARD THE ACCUSED AND WHO HAD PREVIOUSLY THREATENED THE ACCUSED WITH HARM

Petitioner is aware that a primary focus of this Court is to resolve conflicts between circuits. Unfortunately the only conflict that exists in this case is between the state of Nevada and the rest of the free world. In law school we were taught that an attorney has the duty to present significant case law in opposition to his position if it could play a role in the adjudication of the matter. In this situation this is a principle that is quite easy to follow since there has been no significant case since the beginning of our country that states that a biased decision-maker such as Mr. Goodheart should be allowed to sit in judgment over someone he had previously threatened. Not one. In fact, virtually all of the law in the free world speaks to the position that an accused has a right to a hearing before a fair and unbiased judge.

Regretfully, there is a long standing saying in Nevada that "Nevada Supreme Court Rules must have been written in crayon. They are on the books, but the Court itself often seems to not take them seriously." For example, Nevada Supreme Court Rule 103(8) states that "Hearing panel members shall not participate in any proceeding in which a judge similarly situated would be required to abstain." Based upon the written rules, no reasonable person would suggest that Mr. Goodheart should not be disquali-

fied from sitting in judgment over the Petitioner. After all, Mr. Goodheart was responsible for terminating Petitioner from his job, had threatened that "if our paths ever even cross again, I will make you wish that you never met me", and had threatened that if Petitioner ever disclosed the use of illegal drugs by his partner that he would see to it that Petitioner's career was ruined.

Amazingly, the Nevada Supreme Court chose not to offend Mr. Goodheart and his politically powerful firm by the application of this rule. Even though Petitioner complained about the participation of Mr. Goodheart to the Hearing Panel, to the Nevada Supreme Court by Emergency Petition before the Hearing was held, to the Nevada Supreme Court on the first round of briefing, and to the Nevada Supreme Court on the second round of briefing, not once has the Nevada Supreme Court ever directly referred to Mr. Goodheart or addressed Petitioner's specific challenge of the participation of Mr. Goodheart. All Petitioner has ever gotten out of the Nevada Supreme Court on this issue are generalizations referring to the Rules and saying that the rules themselves are fair. In their first order, attached hereto in the Appendix at page 14a, the Nevada Supreme Court said that "Our review of the record reveals that these provisions [Rules 103 and 105] provided Pipkins a full and fair opportunity to challenge in a timely manner the participation in the proceedings of the Chairman of the Southern Nevada Disciplinary Board and all individuals selected by the Chairman to sit on the disciplinary panel."

This makes no sense whatsoever since Petitioner had specifically challenged the participation of Mr. Goodheart in every way possible and has been uniformly ignored. This is like a person saying "Nice watch, what kind is it." and getting the response back, "A quarter past four." It may be a good answer, but it is not responsive to the question at hand. Petitioner specifically said to the Nevada Supreme Court that Mr. Goodheart was a former employer who had been responsible for his termination, that Mr. Goodheart had threatened to ruin Petitioner's career if he ever got a chance, and that thanks to the State Bar Mr. Goodheart had been given that chance by being allowed to sit in judgment over Petitioner's future as a lawyer. Of course he voted for Petitioner's suspension! Isn't that exactly what Mr. Goodheart had promised years before that he would do

if given the chance? Only if Mr. Goodheart had taken a firearm out and shot the Petitioner would it have been more clear that he was biased against the Petitioner and would do anything he could to harm the Petitioner. When someone says that they intend to ruin your career, and then manage to suspiciously wangle a position on a Hearing Panel charged with the responsibility of deciding whether you will be allowed to continue to be a lawyer, and then that person leads the Panel in voting for your suspension, when it is absolutely clear that you did nothing wrong, that is an unfair proceeding. It is crystal clear that Mr. Goodheart set out to ruin Petitioner's career and has been as good as his threat and, thanks to the Nevada Supreme Court looking the other way, has thus far managed to do exactly that.

This is not right. People who hate you and come to a judicial proceeding predisposed to do you harm should not be allowed by the government to sit in judgment over you. That is a basic tenet of the law everywhere. Everywhere, that is, except in Nevada.

In the case of Neblett v. State Bar of California, 17 C.2d 77 (1941), the California Supreme Court ruled in pertinent part:

> The right to practice law is a valuable one which should not be taken away under circumstances that have even the slightest tendency to suggest any possible unfairness or disadvantage therein to an attorney whose right to remain in his profession is challenged.

The primary test is whether the procedures as utilized were fair to the accused. In this instance it can clearly be shown that the procedures did not adhere to even the most basic standards of fairness. In the leading case of In re Murchison, 349 U.S. 133 (1955), this Court held:

> Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a Judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that

"every procedure which would offer a possible temptation to the average man as Judge not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." Tumey v. Ohio, 273 U.S. 510, 532. Such a stringent rule may sometimes bar trial by Judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, "justice must satisfy the appearance of justice." Offutt v. United States, 348 U.S. 11.

The United States Supreme Court has previously made it clear that "the Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." Marshall v. Jerrico, Inc., 446 U.S. 238 (1980). It has further said that "not only is a biased decision-maker constitutionally unacceptable, but our system of law has always endeavored to prevent even the probability of unfairness." Withrow v. Larkin, 421 U.S. 35 (1974); Gibson v. Berryhill, 411 U.S. 564 (1973). In the case of Commonwealth Coat. Corp. v. Continental Cas. Co., 393 U.S. 145 (1968), this Court held that:

> It should be stressed that we are dealing here not with a charge of actual bias, but with a challenge to a procedure as presenting a constitutionally unacceptable potential for bias, based upon the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased, but also must avoid even the appearance of bias. . . . In the Tumey and Ward decisions, the Fifth Circuit concluded that the Supreme Court was not as interested in the probability of bias of an individual Judge or perhaps even, of the great majority of Judges. It was interested rather in the inherent defect in the legislative framework arising from the vulnerability of the average man -- as the system works in practice and as it appears to defendants and to the public.

This Court has held that attorney disciplinary procedures "are adversary proceedings of a quasi-criminal nature." In Re Gault, 387 U.S. 1 (1967). "A disbarment proceeding is quasi

criminal in character and although it is not essential that the guilt of the accused be established beyond a reasonable doubt, nevertheless his guilt must be established by convincing proof to a reasonable certainty." Furman v. State Bar of California, 12 C.2d 212 (1938); Bar Ass'n of San Francisco v. Goldman, 53 C.A. 42 (1921). In re Peterson, 208 C. 42 (1929). A Court may not discipline an attorney "except upon the conviction that, under the principles of right and justice it is constrained so to do. Selling v. Radford, 243 U.S. 46 (1917). In the case of National Sur. Corp. v. Sharp, 232 N.C. 98, (1950) the Court ruled in pertinent part:

> In its procedural aspects the constitutional guaranty of "due process of law" assures to every person his day in Court and means that there can be no proceeding against life, liberty, or property without observance of those general rules established in the American system of jurisprudence for the security of private rights.

In Tumey v. State of Ohio, 273 U.S. 510 (1927) this Court held "It violates the Fourteenth Amendment and deprives a defendant in a criminal case of 'due process of law' to subject his liberty or property to the judgment of a Court, the Judge of which has a direct, personal, substantial, and pecuniary interest in reaching a conclusion in his case." "Due Process" is a law which hears before it condemns, proceeds upon inquiry, and renders judgment only after trial. Sexton v. Barry, C.A. Ohio, 233 F.2d 220 (1956); Gilbert v. Elder, 65 Idaho 383 (1943); Application of Burke, 34 N.J. Super. 400 (1955); Wiley v. Woods, 393 Pa. 341 (1958). "Due Process" does not have regard merely to the enforcement of law, but searches authority for making law. State v. Henry, 37 N.M. 536 (1933).

Clearly, the utilization of a totally biased Hearing Panel member such as Mr. Goodheart violates the due process rights of an accused under the 5th and 14th amendments of the U. S. Constitution. Almost every jurisdiction specifically recognizes that a person with identifiable prejudices and biases, such as Mr. Goodheart, must not sit on a bar disciplinary panel whose purpose is to determine facts and recommend discipline. In

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Snyder's Case, 301 Pa. 276 (1930), the Pennsylvania Supreme Court ruled:

> The existence of facts indicating that a feeling of animosity exists between a judge and an attorney requires the judge to disqualify himself from hearing a disciplinary proceedings against the attorney.

In the case of Woodward v. State Bar of California, 16 C.2d 755 (1941), the California Supreme Court ruled:

> The right to practice law is a valuable right which should be suspended or revoked only on charges alleged and proved and as to which full notice and opportunity to defend has been accorded.

"The indispensable elements of 'due process' are a tribunal with jurisdiction, notice of hearing to proper party, and opportunity for fair hearing according to applicable procedures." Shioutakon v. District of Columbia, D.C. Mun. App., 114 A.2d 896 (1955). "Due process of law requires notice and opportunity to be heard, and it imports the right to a fair trial of the issues involved in the controversy and a determination of disputed questions of fact on the basis of evidence. 'Due process of law', when applied to judicial proceedings, means a course of legal conduct consonant with rules and principles established in our system of jurisprudence for the protection and enforcement of private rights, and requires notice before judgment and an opportunity to be heard in an orderly proceeding adapted to the nature of the case and the right of appeal from or review of a decision regarded by a litigant as unjust." Dation v. Ford Motor Co., 314 Mich. 152 (1946).

In Bradley v. Fisher, 80 U.S. 335 (1883), this Court stated:

> This power of removal from the Bar is possessed by all Courts which have the authority to admit attorneys to practice. It is a power which should only be exercised for the most weighty reasons, such as would render the continuance of the attorney in practice incompatible with a proper respect of the court for itself or a proper regard for the integrity of the profession. And, except

where matters occurring in open court in presence of the judges constitute the grounds of its action, the power of the court should never be exercised without notice to the offending party of the grounds of complaint against him and affording him ample opportunity of explanation and defense. This is a rule of natural justice and is as applicable to cases where a proceeding is taken to reach the right of an attorney to practice his profession as it is when the proceeding is taken to reach his real or personal property. . . .

Admission as an attorney is not obtained without years of labor and study. The office which the party thus acquires is one of value, and often becomes the source of great honor and emolument to its possessor. To most persons who enter the profession, it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family. A removal from the Bar should therefore never be decreed where any punishment less severe – such as reprimand, temporary suspension, or fine – would accomplish the end desired.

Lastly, as Justice Field so wisely wrote in Ex Parte Wall, 107 U.S. 265 (1883):

The possession of the power being conceded, and its exercise being discretionary, there is in the hands of an unscrupulous, vindictive, or passionate judge, means of oppression and cruelty which should not be allowed in any free government. To disbar an attorney is to inflict upon him a punishment of the severest character. He is admitted to the bar only after years of study. The profession may be to him the source of great emolument. If possessed of fair learning and ability he may reasonably expect to receive from his practice an income of several thousand dollars a year – equal to that derived from a capital of one or more hundred thousand dollars. To disbar him having such a practice is equivalent to depriving him of this capital. It would often entail poverty upon himself and destitution upon his family. Surely the tremendous power of inflicting such

a punishment should never be permitted to be exercised unless absolutely necessary to protect the court and the public from one shown by the clearest legal proof to be unfit to be a member of an honorable profession.

II. AT THE HEART OF THIS CASE IS A PRINCIPLE WHICH AFFECTS THE LIVES OF EVERY AMERICAN AND FOR THIS REASON THE COURT SHOULD HEAR THIS CASE

As Petitioner understands the rules of this Court, this brief represents his opportunity to speak his piece and say what needs to be said in order to be properly judged by the wisdom of this court. Given the importance of this matter to me personally, I feel compelled to put in some limited personal observations. I come to you as an innocent man. I know that the Court has heard this thousands of times before, and that oftentimes such representations are not true, but in this case it absolutely is true. I come from an extremely humble background and have accomplished much, and was about to accomplish a great deal more when my good name and my right to practice law in my home state of Nevada were taken away. I once believed my high school civics lessons about how government worked and I also once believed in the goodness of our elected officials. I now have what in the nineties is referred to as "a heightened sense of awareness" as to both of these subjects.

In 1983 I was approached by people I then trusted and respected. I was offered a substance, cocaine, that nearly everyone pays lip service to as a societal evil. I naively confided to a partner in my law firm that I had been so propositioned. I then soon found that my high standards of morality and decency were perceived as representing a financial threat to the law firm. The partner I had confided in, Mr. Goodheart, quickly chose money over morality and I was terminated and I was threatened that if I ever discussed his partner's drug abuse with anyone that there would be a retaliation and, further, that if our paths ever crossed again that he would destroy my career. Our paths did in fact cross again when this individual was suspiciously selected to sit in judgment over me as a lawyer. I then cried foul to the other members of the Hearing Panel who were to judge me, and

to the Chairman of discipline who had selected Mr. Goodheart, but no one listened. Before the Nevada Supreme Court I again cried foul, but no one listened. By the affidavit of the District Court Judge and the other documents attached hereto I have proven that beyond any doubt I am not guilty of ethical improprieties, but still no one has listened. I now stand suspended from the practice of law in Nevada for lying to a Judge who has sworn that I didn't lie to him and at a hearing that everyone agrees never took place. They say Nevada is a special place, but I never anticipated it to be quite this "special".

I now come to the United States Supreme Court with my life in your hands and ask that you listen to my plea for help. I am an innocent person who has done nothing wrong and who's name has been stolen from him by a deceitful individual. Should I be so fortunate as to get your attention, by the time the Court rules on this matter I will have served out my "sentence" of three years of suspension, so there is little you can do about that aspect of the case. However, what I ask of you today is for you to give me a chance to regain my good name. My "wrong" so far has only been to have a high sense of morality and decency, and in return I have been marked by my enemy, with the approval of the Nevada Supreme Court, as a bad lawyer, and have been placed in a category along with those who have truly done evil things. This is not right and the Court can do something about it if it chooses. My problem is that I cannot get those high school civics lessons of more than twenty years ago out of my head. To some it might seem somewhat trite, but I am forced to ask "What kind of country do we have when a man such as Mr. Goodheart can openly say he is going to destroy someone's career and then set out to do it and no one stops him?" I don't care how much money he has, how much political power he has, or who his clients are, this is wrong and morality and the U. S. Constitution demands that it be stopped.

I understand that today an individual has about the same chance of getting their case heard by the United States Supreme Court as they do in winning the lottery. This too is wrong, but given the size of our population and the litigiousness of our society, I guess that there is not much any of us can do about that situation. I just pray that the Court will feel that the principle that is at issue in this matter is considered significant

enough to merit the Court's time. I ask that the Court please remember that America's war on drugs begins with individuals such as myself and when such persons can have their life ruined, their profession taken away, be financially destroyed, as well as having their good name defamed, just because they said "No, I will not participate in that", then this one single individual's dispute does merit the attention of the Court because of what it symbolizes. The overall issues in this matter are important as they represent the same choices made by millions of Americans each day, i.e., "Should I say no, and if I do so, how will it effect my career, and the rest of my life?" Just as this situation has effected my life, so does it effect the lives of individuals throughout our country.

I anticipate that the State Bar of Nevada will try to respond to this Petition by clouding the facts in any way that they think they can get away with. They will try to say that I am a bad person, and that the courts have heard all of this before, and that this is not a national issue worthy of consideration by this Court. None of those arguments have merit, but they will most likely try to argue them anyway. They may even be so dishonest as to challenge the fact that I am an innocent person who, unless the laws of physics have been suspended, could not possibly have done the things with which I am charged. It is not possible for me to have lied to a Judge at a hearing that was taken off calendar before I arrived, to have neglected, at this non-existent hearing, to have informed the Court that an attorney was representing the other side when he had said to me and even said to his clients in writing that he would not represent them, and it is not possible for me to have made misrepresentations to a bank when everyone agrees that my correspondence to the bank was one hundred percent accurate and that the only true legal representations to the bank were made in a document of which I was not a party. No matter what is said by the State Bar, they cannot make a guilty man out of one who is innocent.

However, it is not my innocence that is at the core of this Petition. It is a strange situation, but my total innocence in this matter, as previously shown, is technically not relevant. What is relevant is the one issue that I have proposed that this Court address and that is whether it is "a violation of an accused's constitutionally guaranteed right to a fair and impartial hearing,

and right to due process of law, for an accused to be judged by an individual who has personal animosity towards the accused and who has previously threatened to destroy the career of the accused?" Mr. Goodheart is himself the one issue that I present for the Court's consideration. No one, not the Nevada State Bar nor the Nevada Supreme Court, has ever specifically challenged the fact that Mr. Goodheart was highly biased against me and yet he was allowed over my repeated objections to sit in judgment over me. This clearly violates the laws of our country, and specifically the protections afforded me under the United States Constitution. This one issue is at the center of this entire case and this is the one basis upon which I respectfully ask for consideration by this Court.

CONCLUSION: THE COURT SHOULD GRANT PETITIONER'S REQUEST FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

For the foregoing reasons, Petitioner respectfully requests that the Court grant Petitioner's request for a Writ Of Certiorari to the Supreme Court of the State of Nevada.

Dated this twentieth day of July 1995

Respectfully submitted,

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